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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/670,747	09/25/2003	Gerrit Willem Hiddink	1-12	2752
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EXAMINER				
WONG, BLANCHE				
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/670,747

**Applicant(s)**

HIDDINK ET AL.

**Examiner**

Blanche Wong

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 24 October 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/ICE)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's arguments filed October 24, 2008 have been fully considered but they are not persuasive.

With regard to claims 1,10,21, Applicant states that "Johnson does not, however, disclose or suggest that the retransmission data rate is progressively reduced to at least one of two or more lower retransmission data rates. Applicants note that the requirement for two or more lower retransmission data rates is an affirmative limitation that is not disclosed by Johnson". However, Examiner respectively disagrees.

Examiner has asserts that the limitation "at least one of two or more" can be interpreted as "at least one" or one. That is, a reduction is to go from a higher to a lower value, reducing to only one lower value for any one reduction at a time. Even with the word "progressively", at each reduction, there can only be one reduced lower value. If Applicant is arguing that there are more than one reduction, such a limitation is not recited in the claim language. If Applicant is arguing iterative reduction so that at each reduction reduces to a different lower retransmission data rate, such a limitation is not recited in the claim language. If Applicant is arguing a choice or selection between two or more lower values, such a limitation is not recited in the claim language.

2. Applicant's arguments do not comply with 37 CFR 1.111(c) because they do not clearly point out the patentable novelty which he or she thinks the claims present in view of the state of the art disclosed by the references cited or the

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objections made. Further, they do not show how the amendments avoid such references or objections.

Further with regard to claim 21, Applicant's amendment does not address the 112 concerns regarding "whether this increase is done after the reduction, whether this increase is progressive, and whether this increase is performed by the rate selection mechanism" as recited in the rejection. That is, whether the rate selection mechanism increases the transmission data rate, not "said transmission data rate", for a subsequent frame *after the transmission of the current frame*; and whether the rate selection mechanism progressively reduces and the rate selection mechanism progressively increases. Examiner adds that the limitation "progressively reduces said retransmission data rate to at least one of two or more lower retransmission data rates" contributes and confuses the interpretation of the limitation as explained in para. 1 of this office action.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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4. **Claims 1-20** are rejected under 35 U.S.C. 102(b) as being anticipated by Johnson et. al. (EP 1 096 729 A1) (provided by Applicant).

With regard to claims 1 and 11, Johnson discloses transmitter and receiver elements comprising:

a controller to control of transmission of data **(transmitter) (transmitter and receiver elements of the port card of Fig. 2, para. [0024])** at a transmission data rate **(payload data rate)** and to control retransmission of said data at a retransmission of said data at a retransmission data rate **(lower payload data rate) (step 406 in Fig. 4; switches the payload data rate of the packet to a lower data rate, para. [0028], col. 10, lines 5-6)**, wherein said retransmission is performed if an acknowledgement is not received for a current frame **(fail/no confirmation signal) (fail in step 405 in Fig. 4; no confirmation signal from the receiving entity that the packet has been received, para. [0028], col. 9, line 58-col. 10, line 1)**; and

a rate selection mechanism **(transmitter) (transmitter and receiver elements of the port card of Fig. 2, para. [0024])** that progressively reduces said retransmission rate **(lower data rate)** to at least one lower transmission data rates **(lower data rate)** only for said current frame if an acknowledgement is not received for a current frame **(fail/no confirmation signal) (fail in step 405 in Fig. 4; no confirmation signal from the receiving entity that the packet has been received, para. [0028], col. 9, line 58-col. 10, line 1)**.

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With regard to claims 2 and 12, Johnson further discloses a predefined number of equal rate attempts **(attempted three times, para. [0028], col. 10, line 2).**

With regard to claims 3 and 13, Johnson further discloses an available signal quality **(best mode implement, para. [0028], col. 9, lines 17).**

With regard to claims 4 and 14, Johnson further discloses a retry count **(predetermined number of retransmissions, para. [0029], col. 10, line 57).**

With regard to claims 5 and 15, Johnson further discloses a table of available rates **(the predetermined number of lowering data rates is also the number of available rates) (the predetermined number of retransmissions at the lower payload data rate is preprogrammed and optimized by carrying out trials and experimentation in user environments to determine an optimum number of retries, para. [0029], col. 10, lines 57-41).**

With regard to claims 6 and 16, Johnson further discloses at least a portion of rates supported by a receiving station **([receiving entity in Fig. 5] adjusting its synchronization to receive higher rate data, para. [0030], col. 11, lines 4-5, or no further re-synchronization, col. 11, line 8).**

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With regard to claims 7 and 17, Johnson further discloses an algorithm **(an algorithm runs on a computer) ([Fig. 4 is] a process carried out by ... a transmitting computer entity in a transmit mode, para. [0027], col. 8, line 56).**

With regard to claims 8 and 18, Johnson further discloses IEEE 802.11Standard (**wireless local area network, para. [0020] and CSMA, para. [0024, col. 7, line 18).**

With regard to claims 9 and 19, Johnson further discloses a rate fallback mechanism (**transmitter and receiver elements of the port card of Fig. 2, para. [0024])** that restores (**next packet**) a transmission rate that was in use before (**higher data rate**) said retransmission rate was reduced (**a next packet to be transmitted is again attempted to be transmitted at the higher payload data rate, para. [0026], col. 8, lines 43-45).**

With regard to claims 10 and 20, Johnson further discloses a rate fallback mechanism (**transmitter and receiver elements of the port card of Fig. 2, para. [0024])** that proceeds directly to a fallback state (**lower data rate**) (**switches the payload data rate of the packet to a lower data rate, col. 10, lines 5-6**) if a signal quality is not sufficient to support a data rate associated with an equal rate retry (**the higher data rate, para. [0028, col. 10, line 3).**

***Allowable Subject Matter***

5. Claim 21 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.



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6. Claim 22-25 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

### ***Conclusion***

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Ishii et al. (U.S. Pat No. 7,366,476) discloses a module for selection among retransmission rates which are stored within the system ("**calculating unit 34 acquires the retransmission rates ... from the mobile station information storing unit 37, selects the worst value ....**", col. 9, lines 25-27).

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Blanche Wong whose telephone number is 571-272-3177. The examiner can normally be reached on Monday through Friday, 830am to 530pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Edan Orgad can be reached on 571-272-7884. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Blanche Wong/  
Examiner, Art Unit 2419  
December 31, 2008

/Edan Orgad/  
Supervisory Patent Examiner, Art Unit 2419